



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Regarding: Michael J. Mullane
Serial No. 09/967,250
Filing Date 09/28/2001
For SNOW STOP

Third 37 CFR 1.132 Declaration

Attention: Group Art Unit 3635
Examiner Kevin McDermott
Supervisory Examiner Carl D. Friedman

Commissioner for Patents
Alexandria, VA 22313-1450

I, Michael J. Mullane, hereby state and declare as follows:

This is the third declaration traversing rejections that I have made in the present application. I have read the 03/04/2004 Office action and patent Nos. 4,467,581 to Francovitch; 5,522,185 to Cline; and 5,471,799 to Smeja et al.

As in my Declaration under 37 CFR 1.132 filed April 21, 2003 and my Second 37 CFR 1.132 Declaration filed October 16, 2003, I have been involved in the snow guard trade for over twenty years, first as a roofing contractor and since the early 1980s as a snow guard manufacturer; and am owner/president of the M.J. Mullane Company, Inc. I have had issued as an inventor or co-inventor three utility and four design patents for various snow guards.

The present declaration is made in support of claims 18-20. I stand by my two prior declarations traversing rejections as would support these claims.

As presented in the 2004 Amendment to accompany this declaration, claims 18-20 of my application are as follows:

18. A snow stop comprising a base member and a snow-restraining member connected to a top side of the base member, wherein the base is round and the snow restraining member is included in intersecting, upstanding members in at least one predetermined angle one to another.
19. The snow stop of claim 18, wherein said intersecting is center of the base, and said angle is normal with four of said upstanding members disposed along two planes.
20. The snow stop of claim 18, wherein said upstanding members are at least three in number with convex, circularly bounded outer boundaries that span in uninterrupted arcs, each of which arcs defines a quarter circle, and said angle is the same among said upstanding members.

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The general art or technology pertinent to my invention pointed out by claims 18-20 is that of snow guards or stops, which may be adhesively affixed. A person of ordinary skill in this art would have a sufficient education and an understanding of roofing and snow-induced force.

Also, as I verified previously, in making my invention, one of my concerns was reducing unsightliness of carelessly oriented snow stops. By that, as I believe the Examiner had correctly pointed out when he discussed my application with my attorney afterwards, is mainly meant that the occasional misplacement of a snow stop is a misalignment problem with respect to its intended orientation, the misaligned snow stop otherwise having its base in line with the bases of other snow stops on the roof.

Thus, for example, if a round-based snow stop were to be installed with a snow restraining member oriented parallel to, i.e., at 180 degrees to, an eaves line, but instead had its base rotated by mistake so that that snow restraining member was oriented at an angle other than 180 degrees to the eaves line, the unsightliness of that situation is significantly reduced with my round-based snow stop, particularly in comparison to a snow stop such as of Smeja et al., which has a square or triangular base. The carelessly applied round base remains round and always in its intended orientation, whereas a square or triangular base that is misaligned is noticeably out of its intended orientation.

Based on my experience in the field, this is a significant advance. The roofing contractor, who, of course, is generally careful, would have less to worry about should an inexperienced helper, or any other worker who may make an occasional mistake, misalign a round-based snow stop on a roof. He would still have the satisfaction of having had applied a workable, and generally aesthetically pleasing, snow stop array on the roof, and be less likely to have to replace the misaligned snow stop, perhaps even by having to return to do so, with all the costs in time and materials that such would entail.

What is more, should the snow stop have its intersecting at center of the base, with the intersecting angle normal with four upstanding members disposed along two planes, as claimed in claim 19, or the snow stop have at least three upstanding members with convex, circularly bounded outer boundaries that span in uninterrupted arcs, each of which defines a quarter circle, and the angle of intersection is the same among these upstanding members, as claimed in claim 20, then any misalignment would be even less noticeable, and the aforementioned benefits would be even more pronounced. Note further the snow stop of claim 20, which provides that the viewer look upon not only a round base but regularly spaced, circularly arced upstanding members, which would blend in very well from a ground view with the round base.

These represent significant advances in kind in the art.

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Regarding the art proposed and reasoning set forth in Paper No. 9 to reject the claims at issue, the following is noted:

I the first to invent a round-based snow stop, especially of the type claimed. I have disclosed this in my specification.

The applied patent to Smeja et al. is generally pertinent, but it does not disclose a round-based snow stop. Rather, it expressly teaches toward square and triangular based ones.

The applied patent to Francovitch discloses a membrane anchor system with metal body. This art is not pertinent to snow stops.

The art of the patent to Francovitch is that of fasteners for flexible membrane sheet roofing stock. Such washer-containing type fasteners are common building components. Nothing, however, about a flat disc like fastener that is anchored by a central nail or screw would impede or stop snow and ice from cascading on a slanted roof, nor would a person of ordinary skill in the art of snow stops, who focuses his attention on devices that do impede or stop snow or ice from cascading on a slanted roof, look for improvements in snow stops in such fastener art, especially as represented by Francovitch. The Manual of Classification recognizes this by classifying the fastener of Francovitch in class 52 subclasses 410 and 512 and class 411 subclass 542, which are defined as follows:

052/410: Structure in which a construction assembled at the job site includes a sheet form member, which is imperforate except for openings accommodating preformed means, e.g., ties, the member being held between opposed surfaces of components or layers that are made of a material that differs in kind from that of the member, with the major faces of the member being in contact and substantially coextensive with the opposed surfaces of the components or layers or are embedded in a bonding material between such surfaces, which includes means tying the layers or components together and extending through or around an edge of the dividing member.

052/512: Static structure with a sheetlike element assembled parallel to existing wall, ceiling, or floor (e.g., insulating panel, sheathing) that includes a panel-type element forming an exposed face or major component thereof, which element is separate from but assembled to another structure, e.g., a wall, which usually differs in material from the panel, e.g., an upholstery panel fastened to a metal subpanel or a panel section attached to a pre-erected wall, ceiling, or floor, wherein the module is attached to the supporting structure by a separate securing element that engages the module and is fixedly held

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to said supporting structure by a nail or screw type fastener.

- 411/542: Impact driven, headed fastener (e.g., nail, staple) with a washer structure in the form of an annular element adapted to be placed beneath the bearing surface of the fastener head, wherein the element serves to prevent the ingress of fluids between the fastener with which it is used and an adjacent part.

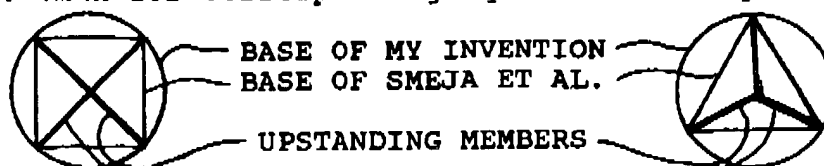
In contrast, the snow guard of Smeja et al. is classified in class 52 subclasses 24 and 25, and I believe the snow stops of my claims 18-20 would be classified there, too, at least in subclass 24. These classifications are defined as follows:

- 052/024: Static structure including means for preventing or restraining the movement of foreign objects or material not permanently part of the roof, e.g., anti-slides for snow.
- 052/025: Structure of subclass 24 comprising a horizontal rod-like portion supported by a plurality of spaced members.

Moreover, as could pertain to claims 18-20, notably 19 and 20, especially as would to claim 19, the fastener of Francovitch, if it were provided with upstanding members would be essentially inoperable. Pounding in the nail of that fastener so modified with upstanding members would more than likely smash the upstanding members, rendering it unusable.

Accordingly, common sense proves Francovitch inapplicable.

Furthermore, the reasoning in Paper No. 9 that states that the motivation for combining Francovitch with Smeja et al., to reduce the cost of the snow guard by reducing the material of the base 12, is wrong. The exact opposite is true! As shown by the diagrams below that superimpose snow guards of Smeja et al. that correspond otherwise to snow stops of my invention with all other things being the same, more material, not less, is required for a round base than for corresponding square or triangular bases.



Thus, the ordinary artisan would be discouraged from making a snow stop with a round base according to such reasoning.

Since all the standing rejections require both of these patents and such reasoning, none of them can be maintained.

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In addition, as pertains to claim 20, the patent to Cline discloses a snow stop. It, however, is of dubious applicability.

The snow stop of the applied Cline patent has no base of the type included in Smeja et al., or claim 20. It is affixed directly on an upstanding seam of a seamed type roof. It also has two in-line "ears" curved differently on upper and lower boundaries, and serve as snow-restraining members, neither of which maintains a circular arc throughout. Note that Cline is found in class 52 subclasses 24 and 26, the latter including, in a structure in subclass 24, means to penetrate the base which supports the means for restraining movement of foreign objects.

In contrast, the snow guard of Smeja et al., classified in general snow stop subclass 24 and particular subclass 25, and the snow stop of claim 20, require a base. Neither is to be mounted on a seam of a seamed roof, but rather, if either were mounted on a seamed roof, both typically would be mounted on a flat portion of the roof between seams. See, e.g., Smeja et al., FIG. 1.

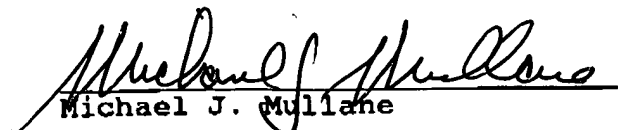
Also, nothing in Cline, with its "ears," nor Smeja et al., with its triangularly shaped upstanding members, nor Francovitch, which has no upstanding members, motivates the ordinary artisan, who I understand does not innovate, to supply at least three upstanding members that span in uninterrupted arcs, each of which arcs defines a quarter circle, with the intersecting angle the same among the upstanding members as in claim 20. No upper and lower curves reside together by such a limitation.

Accordingly, the reasoning in Paper No. 9 that the ordinary artisan would be motivated to make a modification as in Cline's device to accommodate a number of seams independently of the width of the seams for the shapes of the seams, which may have wide tops and relatively narrow upstanding portions goes against the teaching in Smeja et al., and against common sense. No ordinary artisan would modify Smeja et al. in view of Cline.

Again, a round-based snow stop is not found in any reference of record. Nor, as beneficial as I have discovered such to be, have I found such in other commercially available snow guards.

All statements made herein of my own knowledge are true, and all statements made herein on information and belief are believed to be true. Also, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001, and further that such willful false statements may jeopardize the validity of the present application or any patent issuing thereon.

Dated:

June 3 2004 A.D.
Michael J. Mullane